

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
The Proposed Extension of Part 4 of the)	PS Docket No. 11-82
Commission's Rules Regarding Outage)	
Reporting to Interconnected Voice Over)	
Internet Protocol Service Providers and)	
Broadband Internet Service Providers)	

WRITTEN EX PARTE OF
PUBLIC KNOWLEDGE AND OPEN TECHNOLOGY INITIATIVE

Public Knowledge ("PK") and Open Technology Initiative ("OTI") respectfully submit this written ex parte in response to the above-captioned Federal Communications Commission's ("Commission") Notice of Proposed Rulemaking ("NPRM").

I. THE COMMISSION SHOULD IMPOSE OUTAGE REPORTING REQUIREMENTS ON INTERCONNECTED VOICE OVER INTERNET PROTOCOL SERVICE PROVIDERS AND BROADBAND INTERNET SERVICE PROVIDERS IN THE INTEREST OF PUBLIC SAFETY.

The Commission proposes to extend outage reporting requirements to interconnected Voice over Internet Protocol ("VoIP") service providers and broadband Internet Service Providers ("ISPs") to ensure that 9-1-1 emergency systems work well and are reliable. The National Association of Telecommunications Officers and Advisors ("NATOA") and the National Association of State Utility Consumer Advocates ("NASUCA") submitted comments in support of the proposed outage reporting requirements. PK and OTI agree with NATOA and NASUCA that the Commission should impose outage reporting requirements on VoIP and broadband ISPs.

As NASUCA explained, the Commission needs a mechanism to address the problems that arise when consumers lack access to emergency services,¹ and the outage reporting requirements will act as a necessary mechanism. Increasingly, consumers substitute interconnected VoIP and broadband internet services for traditional phone service. VoIP and broadband users rely on the communication services not only to complete many daily tasks, but also to connect to emergency services in times of danger. When VoIP and broadband internet service providers have outages, their customers cannot call for emergency help. At present, consumers, safety officials, and the Commission do not know how VoIP and broadband ISP networks operate or how to prevent future outages because there is minimal data on both outages and service providers' implementation measures for reliable networks.² One thing is certain—the system for outage reporting that currently exists for telephone service providers reduced the number of lost 9-1-1 calls.³ Therefore, new outage reporting requirements should also reduce lost 9-1-1 calls and improve public safety.

Outage reporting requirements will not only benefit the public in emergency situations, but they will also benefit the public and industries in non-emergency situations by providing reliable networks. The VoIP and broadband internet services need a measurement of reliability because consumers use the services not only for emergencies, but also for many non-emergency purposes such as education and economic activity. Industries benefit from current regulations, which measure reliability by tracking and analyzing data, because the data analyses “have led to the development and refinement of industry best practices” and fewer outages.”⁴ Outage

¹ Comments of The National Association of State Utility Consumer Advocates (“NASUCA”) and The New Jersey Division of Rate Counsel, PS Docket No. 11-82, at 6 (Aug. 8, 2011).

² *Id.* at 6, 8.

³ *Id.* at 5.

⁴ Comments of The National Association of Telecommunications Officers and Advisors (“NATOA”), The National League of Cities, and The National Association of Counties, PS Docket No. 11-82, at 2 (Oct. 7, 2011).

reporting requirements for interconnected VoIP and broadband internet service providers will generate the data necessary to measure network reliability and improve the network to give subscribers the low risk of outages that they deserve. National security, safety and past successful results from reporting requirements justify the implementation of the outage reporting requirements for interconnected VoIP service providers and broadband ISPs.⁵

II. MANDATORY OUTAGE REPORTING REQUIREMENTS FOR ALL VOIP AND BROADBAND ISPS WILL PROVIDE THE MOST COMPREHENSIVE DATA WITHOUT UNDULY BURDENING SERVICE PROVIDERS.

The Commission seeks comment as to whether the outage reporting requirements should be mandatory or voluntary. PK and OTI agree with NATOA and NASUCA, which both urge that reporting must be mandatory.⁶ Correcting and preventing network outages requires comprehensive, accurate data.⁷ The Commission must make reporting mandatory because voluntary reporting was resisted and unsuccessful,⁸ and therefore, it is unlikely to provide comprehensive data.

Making the outage reporting requirements mandatory will not unduly burden VoIP or broadband ISPs. First, the reporting requirements act only as a mechanism to improve VoIP and broadband services and do not place blame on service providers. Second, VoIP and broadband internet service providers already should be collecting data on their service outages and will only have to report outages over thirty minutes under the NPRM,⁹ so submitting an outage report should only produce minimal, if any, additional burdens. Third, any additional burden from reporting outages to the Commission would be the same as the burden on other service providers

⁵ Comments of NASUCA at 8.

⁶ *Id.* at 10; Comments of NATOA at 3.

⁷ Comments of NATOA at 3.

⁸ Comments of NASUCA at 11.

⁹ *In the Matter of The Proposed Extension of Part 4 of the Commission's Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers*, PS Docket No. 11-82, *Notice of Proposed Rulemakings*, rel. May 13, 2011 ("Notice") at 38, 40.

who are currently required to submit outage reports. For these reasons, the Commission correctly found that submitting reports “would not result in an undue administrative burden.”¹⁰

To the extent the reporting requirements do burden service providers, the burdens must be balanced with the benefits to the public interest. Consumers need outage information to determine network stability, and there is no other way to get outage reports without a reporting requirement. Therefore, the need for outage information outweighs any burden on service providers, and the Commission should make the outage reporting requirements mandatory.

III. THE OUTAGE REPORTING REQUIREMENTS FOR VOIP AND BROADBAND ISPS SHOULD BE PUBLICLY AVAILABLE, AND NOT CONFIDENTIAL, TO INFORM CUSTOMERS AND EMERGENCY SERVICE DEPARTMENTS OF NETWORK RELIABILITY.

The Commission also seeks comment concerning the confidentiality of outage reporting data. PK and OTI urge the Commission to make the outage reporting requirements publicly available so that consumers may make informed decisions when choosing interconnected VoIP or broadband internet service. Additionally, state emergency departments will use the data to help improve public emergency services.¹¹ These benefits outweigh any concerns that the service providers have about releasing data. Moreover, as PK and OTI agree with NATOA and NASUCA that the reporting requirement should be mandatory, a promise of confidentiality would not affect outage reporting or data.

Outage reports must be publicly available so that customers will not “suffer” as a result of a faulty service provider¹² and so local governments can properly carry out their first responder responsibilities.¹³ PK and OTI disagree with Commenters that believe outage

¹⁰ *Id.* at 26.

¹¹ Comments of NATOA at 4 *citing* Comments of the Massachusetts Department of Telecommunications and Cable, PS Docket No. 11-82 at 8-9 (Aug. 8, 2011).

¹² Comments of NASUCA at 11-12.

¹³ Comments of NATOA at 4.

reporting data should be kept confidential to protect national security.¹⁴ National security would only be in jeopardy if consumers thought that an unreliable network was reliable. Widely known information, however, improves national security, and with publicly available outage reporting requirements, consumers will know which networks are reliable. Therefore, outage reporting requirements should be publicly available, and not confidential, to ensure that consumers and emergency service providers can access information on the reliability of networks.

IV. VOIP AND BROADBAND ISPS DO NOT NEED TO WORRY ABOUT OUTAGE REPORTING REQUIREMENTS EVEN IF THE REQUIREMENTS ARE MANDATORY AND PUBLICLY AVAILABLE.

Communications service providers are not worried about security threats to their infrastructure; rather, they are merely worried about reporting outages and embarrassment if the public discovers significant network outages. Fortunately, Measuring Broadband America taught service providers a lesson—that broadband speed reporting was manageable and the publicly disclosed data ultimately benefitted the broadband industry—and this lesson should ease service providers' concern. Measuring Broadband America reported the actual broadband speed of service providers and compared the results to the advertised broadband speed.¹⁵ The service providers did not want the actual broadband speeds reported in case the speeds were lower than advertised. The results showed that, for the most part, the actual broadband speeds were very close to the advertised speeds, countering the prevailing assumption that broadband providers always exaggerated their claimed speeds.¹⁶ Everyone benefitted from the transparency of informational reports, even service providers—and even when the service providers did not think they would benefit.

¹⁴ *Id.* at 4.

¹⁵ FCC's Office of Engineering and Technology and Consumer and Governmental Affairs Bureau, MEASURING BROADBAND AMERICA: A REPORT ON CONSUME WIRELINE BROADBAND PERFORMANCE IN THE U.S. 26 (2011).

¹⁶ *Id.*

The lesson is applicable here: VoIP and broadband ISPs do not want to be embarrassed, but public disclosure ultimately benefits both service providers and the public. Service providers and the public will use outage report data to discover not only problems but also strong network performances. Thus, outage reports, even if mandatory and public, will provide information to help the public and emergency service providers without embarrassing interconnected VoIP service providers or broadband ISPs.

V. CONCLUSION

Public Knowledge and Open Technology Initiative respectfully urge the Commission to extend mandatory, publicly-available outage reporting requirements to interconnected VoIP service providers and broadband ISPs. The reports will keep public consumers informed of their communication service options and safe during emergency situations.

Respectfully submitted,

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